91-1012

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The Supreme Court of the United States

OCTOBER, 1991 TERM

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO,

Petitioner

—v—

UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Did the court of appeals err when it dismissed the IBT's appeal of the district court's order affirming the veto, by the Independent Administrator, of the IBT's future payments to Windsor Graphics, Inc. pursuant to a contract for printing services?

(a) Can the IBT appeal the district court order prior to the entry of final judgment?

(b) Does the IBT's compliance with the veto render the appeal moot, thereby preventing the IBT from protecting its reputation from the Independent Administrator's and the district court's unsubstantiated conclusions of racketeering activity?

PARTIES TO THE PROCEEDING IN THE COURT OF APPEALS

United States of America,

Plaintiff-Appellee,

v.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO,

William J. McCarthy,

Defendants-Appellants.

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OPINIONS BELOW

United States v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, No. 88 Civ. 4486 (DNE) (S.D.N.Y. June 18, 1991).

The district court's opinion and order is reported at 765 F. Supp. 1206.

United States v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, No. 91-6160 (2nd Cir. September 17, 1991).

The court of appeals' order is not reported.

JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES

On September 17, 1991 the United States Court of Appeals for the Second Circuit heard argument on and granted the Government's motion to dismiss an appeal by

the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO ("IBT") from the district court's June 18, 1991 opinion and order.

The IBT submits this Petition for a Writ of Certiorari to review the decision of the United States Court of Appeals for the Second Circuit pursuant to 28 U.S.C. §1254(1). This case is appropriate for Supreme Court review because the court of appeals' order unfairly punishes the IBT, which by acting to further the interests of its membership, is now deprived of an opportunity to protect its reputation against unsubstantiated conclusions of racketeering activity.

STATUTES

18 U.S.C. §1951:

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

* * *

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

* * *

18 U.S.C. §1961(1):

As used in this chapter [18 USCS §§ 1961 et seq.] -

(1) "racketeering activity" means (A) any act or threat involving murder, kidnaping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: . . . section 1951 (relating to interference with commerce, robbery, or extortion). . . .

18 U.S.C. §1962:

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

* * *

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

18 U.S.C. §1964:

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any

person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

* * *

28 U.S.C. §1254(1):

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

STATEMENT OF THE CASE

On March 14, 1989, the IBT, acting through the members of its General Executive Board, entered into a settlement of a civil action brought by the Government against the IBT, its General Executive Board, and others, alleging violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §1961, et seq.. The complaint alleged that the IBT had been dominated, exploited and controlled by La Cosa Nostra figures. See, e.g., United States v. Intern. Broth. of Teamsters, 931 F.2d 177, 186 (2d Cir. 1991). The settlement was approved by the district court (Edelstein, J.) in the form of a consent decree (the "Consent Decree").[1/]

Among other things, the Consent Decree provides for a court-appointed Independent Administrator with broad powers to oversee the affairs of the IBT, including the power to veto expenditures of the IBT. However, unlike broader powers granted to him elsewhere in the Consent Decree,[2/] the Administrator may only exercise his veto if he reasonably believes that the action or proposed action

> constitutes or furthers an act of racketeering activity within the definition of Title 18 U.S.C. §1961, or furthers or contributes to the association . . . of the IBT or any of its members with L[a] C[osa] N[ostra] or elements thereof . . . .

(A. 45-46.) This limitation on the Administrator's remedial power expressly applies to

> any expenditures or proposed expenditure of International Union funds . . . approved by any officers, agents, representatives or employees of the IBT . . . .

(A. 46.)

According to the Consent Decree, the Administrator's authority to veto actions of the IBT "shall terminate after the certification of the 1991 election results by the Election Officer . . . ." The vote will take place in December 1991. Certification of the election results will take place within one month thereafter. (A. 31.)

The Consent Decree provides:

> Upon satisfactory completion and implementation of the terms and conditions of this order, this Court shall entertain a joint motion of the parties hereto for entry of judgment

dismissing this action with prejudice and without costs to either party.

(A. 31.)

1. The Administrator's Veto of Contract Payments to Windsor Graphics, Inc.

In March 1989, the IBT awarded the contract for printing The International Teamster magazine to Windsor Graphics, Inc. ("Windsor"), a Massachusetts corporation owned by IBT General President William McCarthy's son-in-law. An investigation of the contract award ordered by the Administrator resulted in an Auditor's Report issued on October 10, 1990. (Affidavit of Rudolph F. Pierce in Opposition to Government's Motion to Dismiss, dated August 9, 1991, ¶5, p.4, hereinafter cited "Pierce Aff.")

The Auditor's Report was highly critical of the bidding process leading to the award of the printing contract to Windsor.[3/] After reviewing the Auditor's Report and prior to any action by the Administrator, the IBT agreed to cancel the Windsor contract and rebid the printing contract in accordance with the generally accepted bidding principles cited in the Auditor's Report. The Windsor contract was subsequently cancelled. A new printer was hired to print the magazine until the rebidding was completed. (Pierce Aff. ¶6, p.4.)

Despite the fact that the IBT had already agreed to rebid the printing contract in accordance with the auditor's recommendations, on January 29, 1991, the

Administrator vetoed any further expenditures by the IBT to Windsor in connection with the publication of The International Teamster magazine (the "Veto"). The Administrator issued a report to the district court in which he adopts, among others, the following findings of his auditor:

> [T]he competitive bidding process used by the IBT was seriously flawed in that: bid specifications were not prepared; inconsistent bid information was obtained; sealed bids were not used, providing the opportunity for bid data to be provided to the successful bidder; bids were only requested from three companies; bid evaluation was performed by unqualified individuals; one bid was withheld from the evaluation process; a written contract was not prepared; and a need to prepay [the] paper supplier was excluded from the bid.

* * *

> The process used for the current contract, although seriously flawed, has resulted in a substantial reduction in the costs of the magazine; however there are no assurances that the IBT actually received the lowest price available.

(Declaration of Edward T. Ferguson, III in Support of Government's Motion to Dismiss, dated August 1, 1991, Exh. B., p. 7, emphasis added, hereinafter cited "Ferguson Dec.")

The Administrator may not, according to the Consent Decree, veto an expenditure or proposed expenditure of IBT funds unless he reasonably believes that the expenditure would constitute or further an act of racketeering as defined in RICO, or would further or contribute to the association of the IBT or its members with La Cosa

Nostra. (A. 45-46.) As the basis for vetoing expenditures to Windsor, the Administrator determined that, by implementing a hidden plan to award the printing contract to Windsor, IBT General President William McCarthy and Communications Director F.Z. Zeller, "aided and abetted an extortion of the [IBT] members' right to 'a democratic participation in the affairs of their union.'" (Ferguson Dec., Exh. B at 34.) The Administrator alleged that the activity violated 18 U.S.C. §1951. (Ferguson Dec., Exh. B. at 34; A. 5-6.)

2. The District Court's Opinion and Order.

As permitted by the Consent Decree, the Administrator filed an Application with the

district court seeking approval and enforcement of the Veto. Despite the fact, acknowledged in the Administrator's Report, that the IBT had already agreed to cancel the Windsor contract and rebid it in accordance with the auditor's recommendations (Ferguson Dec., Exh. B at 35), the Government filed a memorandum urging the district court to approve the Administrator's Application. (Government's Memorandum in Support of Application XX by the Independent Administrator, dated March 4, 1991.) The IBT filed an objection to the Independent Administrator's Application. On June 18, 1991, the district court issued a published opinion and order affirming the Veto.[4/] In its

June 18 opinion and order, the district court specifically acknowledged that, in light of the IBT's agreement to rebid the contract, "[t]he only issue on appeal to this Court is the . . . Administrator's finding that McCarthy and Zeller's actions furthered an act of racketeering." (A. 6-7.)

The IBT's objection to the Veto was based upon the Administrator's failure to identify any factual support for several necessary elements of extortion, which the Administrator found to be the "racketeering activity" giving rise to his veto authority.

In consideration of the issue of racketeering activity, the district court discussed past union wrongdoing without acknowledging the Administrator's failure

to offer factual support for his belief that the award of the printing contract to Windsor Graphics resulted from extortion. The court stated:

> A decision by the Independent Administrator to exercise his veto power because of an action of the IBT that furthers the loss of the members' LMRDA rights must be considered in light of the fact that the membership's LMRDA rights that [sic] have been taken away through decades of institutionalized corruption. The explicit purpose of the Consent Decree was to eliminate corrupt IBT practices. To that end, the Consent Decree contains express admissions of allegations of wrongdoing and corruption in the IBT. Consent Decree at 2.

(A. 21-22.) The court also noted that the conduct of McCarthy and Zeller "furthered the longstanding denial of the [IBT]

membership's LMRDA rights through extortionate acts of their leadership. (A. 23, emphasis added.) No facts are cited to support the conclusion that extortion was committed. The court's apparent assumption is that the required evidentiary standard for determining extortion should be relaxed "in light of . . . decades of institutionalized corruption."

Neither the district court nor the Administrator addressed the obvious point that evidence to support each element of extortion should be required for the Administrator to reasonably believe that an act of racketeering activity occurred. In exercising his Veto the Administrator offered no evidence of (1) the identity of

the principal who committed the extortion allegedly aided and abetted by McCarthy and Zeller; (2) the actual or threatened use of force, violence or fear in connection with the alleged extortion; (3) an intent by anyone involved in the Windsor matter to exploit fear instilled in any alleged extortion victim(s); (4) any reasonable fear on the part of any alleged extortion victim(s); or (5) the obtaining of any specific property from any victim(s).

3. The Order of the Court of Appeals for the Second Circuit.

On June 20, 1991, the IBT filed a notice of appeal from the district court's opinion and order. IBT General President

William McCarthy filed a notice of appeal from the same opinion and order on July 18, 1991. The Court of Appeals for the Second Circuit consolidated the two appeals on July 31, 1991. The Government, on August 1, 1991, moved to dismiss both appeals.

On September 17, 1991, the Second Circuit heard argument and issued its order granting the motion to dismiss.

ARGUMENT

I. THE DISTRICT COURT'S OPINION AND ORDER IS APPEALABLE.

The IBT bases this petition on its belief that it is manifestly unfair for the

Administrator to issue a public report charging the IBT and its General President with racketeering after the IBT had already agreed to the remedy sought in the report; for the Government then to urge the district court to approve the Administrator's findings of racketeering activity despite the IBT's agreement to the remedy; for the district court to issue a published opinion approving of the Administrator's findings of racketeering activity; and, when the IBT appeals that decision, for the Government to reverse its earlier position and claim that the appeal is moot. The IBT contends that, under these circumstances, the unsubstantiated conclusion by the Administrator and the

district court that the union engaged in racketeering activity creates a continuing controversy that can be appealed prior to a final judgment in this civil RICO action. The administration of this complex consent decree requires a flexible approach to appellate issues. A flexible approach in determining when an appeal may be taken and when a controversy is moot is necessary to prevent the unfairness that would result from the dismissal of the IBT's suit challenging unfounded accusations and conclusions of racketeering activity.

Unlike its action in the appeal of this case, the Court of Appeals for the Second Circuit has repeatedly allowed appeals arising from the implementation of consent

decrees.[5/] Indeed, the Second Circuit recently considered such an appeal in this very case. In United States v. Intern. Broth. of Teamsters, 931 F.2d 177, 182-83 (2d Cir. 1991), the court of appeals entertained the IBT's appeals from the district court's Election Rules Order and Staffing Order. In finding that the exercise of appellate jurisdiction was appropriate, the Second Circuit stated:

> The administration of complex consent decrees such as the present one gives rise to issues of appellate review that differ from those in ordinary litigation. Whereas rulings in ordinary litigation can be reviewed for error and effect on the judgment after that judgment is final, rulings in the course of administering a Consent Decree concern implementation of the judgment itself, and often require intermediate acts by parties that may

> be unreviewable if appeals are delayed until compliance is final. A flexible approach is thus necessary . . . .

931 F.2d at 183.

The need for a flexible approach in this case is particularly apparent upon review of the Consent Decree provisions relating to the entry of final judgment. The Consent Decree provides for a dismissal with prejudice on the joint motion of the parties following the satisfactory implementation of the Consent Decree's provisions. (A. 31.) Having moved for dismissal with prejudice under the terms of the Consent Decree, the IBT will not be allowed thereafter to pursue an appeal. See Empire Volkswagon v. World-Wide Volkswagon Corp., 814 F.2d 90, 94 (2d Cir.

1987). Accordingly, the IBT will not be able to obtain review of the issue presented on this appeal following "final judgment" in this case.

In addition, an appeal after final judgment, even if permitted, would be ineffectual. The issue presented on appeal involves the Administrator's authority to veto under the Consent Decree. The IBT seeks clarification of the type of factual record that the Administrator must develop to support a finding that racketeering activity occurred. The strictest application of the final judgment rule would prevent an appeal until the case was dismissed upon joint motion of the parties. Upon dismissal, however, the

Administrator's tenure will be terminated. The clarification sought on appeal, therefore, would be of no value in limiting future conduct of the Administrator.

The district court order is also appealable, prior to final judgment, as a "collateral order." The collateral order doctrine permits the immediate appeal of certain orders that cannot be effectively reviewed after final judgment is entered. See Cohen v. Beneficial Loan Corp., 337 U.S. 541, 69 S.Ct. 1221, 93 L.Ed. 1528 (1949). To fall within the scope of this exception to the final judgment rule

> the order must satisfy each of three conditions: it must (1) "conclusively determine the disputed question," (2) "resolve an important issue completely separate from the merits of the action," and (3) "be effectively unreviewable on appeal from a final judgment."

Van Cauwenberghe v. Baird, 486 U.S. 517, 522 (1988), quoting Coopers & Lybrand v. Livesay, 437 U.S. 463, 468 (1978). The Second Circuit has previously applied this doctrine to other issues arising in this case. See United States v. Intern. Broth. of Teamsters, 931 F.2d at 183 (Election Rules Order and Staffing Order).

The district court's order satisfies each criterion of the collateral order doctrine. First, the district court's decision conclusively determines that the Administrator may exercise his veto authority in the absence of evidence supporting each element of the "racketeering activity" allegedly giving

rise to that authority. It also stands for the proposition that the district court can cure deficiencies in the record by taking judicial notice of the validity of unproven allegations supporting its conclusion that for "decades" past IBT leaders have deprived the IBT membership of its statutory rights through "extortionate acts." Second, this is an important issue in that it allows a court-appointed officer to exceed the authority granted to him under the Consent Decree and to substitute his will for that of the constitutionally-selected representatives of the membership of one of the world's largest trade unions. This particular issue bears no relation to the merits of this civil RICO action. Finally, as noted

above, the court's order is unreviewable on appeal from final judgment.

II. THIS MATTER IS NOT MOOT.

A flexible approach, similar to that applied to the final judgment rule, is also necessary in determining the issue of mootness. Such an approach is appropriate due to the "unique" nature, as previously noted by the Second Circuit, of this massive civil RICO action. See United States v. Intern. Brother. of Teamsters, 931 F.2d at 186. That court has already stated that issues of appellate review arising from the administration of this Consent Decree, because they differ from issues in ordinary legislation, may require a flexible approach. 931 F.2d at 183.

The Independent Administrator and the district court accused the IBT of racketeering activity after the union voluntarily agreed to stop making payments to Windsor pursuant to the printing contract and rebid the contract following procedures approved by the Administrator. These facts should not, however, render the appeal moot. A flexible approach, taking into account the seriousness of the accusations and the unfair manner in which they were issued, leads to the conclusion that the accusations of racketeering activity created a controversy which continues to harm the IBT.

Despite the IBT's compliance with the recommendations of the Administrator's

auditor, the Administrator nonetheless publicly accused the IBT, through its General President, of engaging in racketeering activity. The district court, at the Government's urging, affirmed the Administrator's decision despite its express acknowledgement that the IBT had agreed to rebid the contract. Indeed, the court limited its review to the allegations of racketeering.

Fundamental unfairness results from the Government's success in convincing the court of appeals to dismiss an appeal on principles of mootness which, if applicable, should have prevented the district court from issuing its opinion and order. A flexible approach, which

considers the need to consistently apply legal principles, would prevent the Government's undue advantage gained from the inconsistent approaches taken by the lower courts.

Moreover, the allegations made are of a most serious nature. The courts have previously recognized the irreparable damage that can be inflicted to reputations as the result of allegations of "racketeering." In Plount v. American Home Assurance Co., Inc., 668 F. Supp. 204, 206 (S.D.N.Y. 1987), the court noted:

> If . . . sensitivity toward a defendants' reputation is called for in every garden variety fraud, then surely equal solicitude is necessary for defendants' good names in an action which goes much further and labels them "racketeers."

Accord, Schnitzer v. Oppenheimer & Co., Inc., 633 F. Supp. 92, 97 (D.Or. 1985); Taylor v. Bear Stearns & Co., 572 F. Supp. 667, 682 (N.D.Ga. 1983).

The continuing harm befalling the appellants is increased by the fact that the Administrator and the district court not only accuse, but also conclude that the union officers aided and abetted extortion. A flexible approach to mootness allows for the appropriate consideration of the serious and continuing harm caused by the unfounded conclusions that the union committed a criminal act.

Compounding the unfairness of the racketeering allegations was the choice they forced on the union. The IBT could most clearly protect its right to appeal

the Administrator's conclusions only by failing to improve a bidding process in a manner that would benefit its members. Under the Government's view of mootness, the IBT could preserve its appellate rights only by refusing to rebid the printing contract. A flexible approach to mootness permits the IBT to further the interests of its members while also protecting itself against unsubstantiated conclusions of racketeering activity.

In addition to being justified under a flexible approach, the IBT's appeal of the district court order also falls within a more traditional exception to the mootness doctrine. "It is well settled that a defendant's voluntary cessation of a

challenged practice does not deprive a federal court of its power to determine the legality of the practice." City of Mesquite v. Aladdin's Castle, Inc., 455 U.S. 283, 289 (1982). Accord United States v. W.T. Grant Co., 345 U.S. 629, 632 (1953); Iron Arrow Honor Society v. Heckler, 464 U.S. 67, 71-72 (1983); United States v. Generix Drug Corp., 460 U.S. 453, 456 n.6 (1983); R.C. Bigelow, Inc. v. Unilever N.V., 867 F.2d 102, 106 (2d Cir. 1989).

Cessation of a challenged activity will only render a case moot if "it is 'absolutely clear that the alleged wrongful behavior could not be reasonably expected to recur.'" Gwaltney v. Chesapeake Bay

Foundation, 484 U.S. 49, 66 (1987) (emphasis in original), quoting United States v. Phosphate Export Assn., Inc., 393 U.S. 199, 203 (1968). Accord City of Mesquite, 455 U.S. at 289 and n.10. Indeed, the possibility that . . . [the defendant] may change its mind in the future is sufficient to preclude a finding of mootness." Generix Drug, 460 U.S. at 456 n.6 (emphasis supplied).

Implicit in the Administrator's report is the finding that competitive bidding for the printing contract is required if the IBT General President is to satisfy his obligations to the union membership and avoid what has been described as an extortion of the membership's right to a

democratic union. The district court more explicitly stated that "because prior General Presidents had awarded the printing contracts in the past in even more corrupt ways [i.e., without competitive bidding] does not sanitize McCarthy's conduct." (A. 25.)

Despite the intentions of its current leadership, the IBT is unable to ensure that in the future the printing contract will be awarded with competitive bidding. In fact, for nearly twenty years IBT General Presidents awarded the printing contract without competitive bidding. (Ferguson Dec., Exh. B, p. 7.) The IBT Constitution does not require competitive bidding but empowers the General President

"to employ such help as he may need to carry on" the publication of the magazine. (Pierce Aff. fn. 8, p. 5.)

As noted by this Court in City of Mesquite, where a dispute is "not technically moot [and] an appeal has been properly taken . . . [the court has] no choice but to decide it." 455 U.S. at 289 n.10. The burden of demonstrating mootness "is a heavy one." W.T. Grant, 345 U.S. at 632-33. In this case, the Government has not met that burden.

CONCLUSION

If this Court does not grant certiorari and determine the issues raised herein, the IBT will have been harmed by conclusions of

racketeering activity, stated by the Administrator and restated by the district court, without ever having an appeal heard on the merits of the union's contention that the conclusions are unsubstantiated by evidence.

Respectively submitted,

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END NOTES

1. The Consent Decree is reproduced at A. 28-80.

2. For example, with respect to disciplinary authority the Administrator is granted the same "rights and powers as the IBT's General President and/or General Executive Board under the IBT's Constitution . . . and Title 29 of the United States Code. . . ." (A. 40.) The Administrator has used this power to, among other things, direct local IBT affiliates to cease paying benefits to members convicted of racketeering activity, or having ties to organized crime.

3. With the award to Windsor, the IBT for the first time in its history awarded the magazine printing contract pursuant to a bidding process. For nearly twenty years IBT General Presidents have awarded the printing contract without competitive bidding. (Declaration of Edward T. Ferguson, III in Support of Government's Motion to Dismiss, dated August 1, 1991, Exh. B, p. 7.) Competitive bidding is not required by the IBT Constitution which empowers the General President "to employ such help as he may need to carry on" the publishing of the magazine. (Pierce Aff. fn. 8, p. 5.)

4. The district court opinion and order is reproduced at A. 3-27.

5. See, e.g., In re "Agent Orange" Product Liability Litig., 821 F.2d 139 (2d Cir.), cert. denied, 484 U.S. 953 (1987); Janus Films, Inc. v. Miller, 801 F.2d 578 (2d Cir. 1986); Sanchez v. Maher, 560 F.2d 1105 (2d Cir. 1977); New York State Ass'n for Retarded Children, Inc. v. Carey, 596 F.2d 27 (2d Cir.), cert. denied sub nom. Coughlin v. New York State Ass'n for Retarded Children, Inc., 444 U.S. 836 (1979).

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OCTOBER, 1991 TERM

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO,

Petitioner

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UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

APPENDIX

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Order of Honorable David N. Edelstein Dated March 14, 1989 (Consent Decree).. 28

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 91-6160

United States of America,

Plaintiff-Appellee,

v.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO,

Defendant-Appellant.

ORDER

Motion for dismissal of appeal from order of Hon. David N. Edelstein.

Before: Hon. Thomas J. Meskill, Hon. Lawrence W. Pierce, and Hon. J. Daniel Mahoney, C.JJ.

IT IS HEREBY ORDERED that the motion be and it hereby is granted.

Filed: September 17, 1991

Elaine B. Goldsmith, Clerk
by: Arthur Heller, Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, OF WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO, et al., Defendants.	OPINION & ORDER 88 CIV.4486(DNE)

IN RE: APPLICATION XX
BY THE INDEPENDENT
ADMINISTRATOR

APPEARANCES: OTTO G. OBERMAIER, United States Attorney for the Southern District of New York, (Edward T. Ferguson, III, Assistant United States Attorney, of counsel) for the United States of America;

GOULSTON & STORRS, Boston Massachusetts (Rudolph Pierce, Dennis King, of counsel) for the International Brotherhood of Teamsters

EDELSTEIN, District Judge:

This opinion emanates from the voluntary settlement in the action commenced by the plaintiff United States of America (the "Government") against defendants International Brotherhood of Teamsters (the "IBT") and the IBT's General Executive Board (the "GEB") embodied in the voluntary consent order entered March 14, 1989 (the "Consent Decree"). The remedial provisions in the Consent Decree provided for three Court-appointed officials, the Independent Administrator to oversee the remedial provisions, the Investigations Officer to bring charges against corrupt IBT members, and the Election Officer to oversee the electoral process leading up to

and including the 1991 election for International Officers (collectively, the "Court Officers"). The goal of the Consent Decree is to rid the IBT of the hideous influence of organized crime through the election and prosecution provisions.

Application XX presents for this Court's review the Independent Administrator's report to the Court on the Windsor Graphics matter. In Application XX, the Independent Administrator investigated the circumstances of the IBT General President McCarthy and Director of Communications F.Z. "Duke" Zeller's award of the contract to print its monthly magazine, The International Teamster, to Windsor Graphics, Inc. The Independent Administrator found that the expenditure of

funds to Windsor Graphics would further an act or racketeering recognized under the RICO statute, 18 U.S.C. §1961(1), the aiding and abetting the extortion of the IBT membership's rights to union democracy and self-governance under the Labor-Management Reporting and Disclosure Act of 1959 ("LMRDA"), 29 U.S.C. §411, in violation of the Hobbs Act, 18 U.S.C. §1951. The Independent Administrator directed that the IBT rebid the contract.

The IBT has agreed to rebid The International Teamster printing contract in a process approved by the Independent Administrator. The only issue on appeal to this Court is the Independent Administrator's finding that McCarthy and Zeller's actions furthered an act of

racketeering. Further, Zeller moved this Court to intervene in this matter.

Nonetheless, the Government argues that the decision and directives of the Independent Administrator should be affirmed in all respects, notwithstanding the IBT's willingness to rebid The International Teamster printing contract. The Government contends that the Independent Administrator's finding that McCarthy and Zeller aided and abetted the extortion of the members' LMRDA rights is fully supported by the evidence and is neither arbitrary nor capricious.

Considering the deference accorded the Independent Administrator and the standard set out in ¶F.12.(B) of the Consent Decree for a veto of funds, his findings in this

matter are fully supported by the evidence. His conclusions are neither arbitrary nor capricious. Accordingly, the finding of the Independent Administrator appealed by the IBT is affirmed.

I. The Independent Administrator's Findings

The Independent Administrator's veto was made as a result of an investigation conducted by his staff into the IBT's 1989 award of a contract to print International Teamster to Windsor Graphics, Inc. The Report to this Court that concluded with the veto set forth the results of that investigation (the "Report"). The relevant factual findings are summarized.

On March 1, 1989, IBT General President William McCarthy awarded the contract to

print The International Teamster to Windsor Graphics. The International Teamster is the IBT monthly magazine, with a circulation of 1.8 million. Windsor Graphics is a closely held printing firm that had been recently founded by General President McCarthy's daughter and son-in-law, Thomas J. Treacy. Windsor Graphics is now owned by Mr. Treacy alone. Windsor Graphics had no printing capacity of its own, and was operated out of Treacy's home.

The contract was awarded by the following bidding process. McCarthy ordered Zeller to accept bids from only three bidders, and that Windsor Graphics be one. Good Impressions, the previous printer was not invited to bid. No bid

specifications or deadlines were issued to the bidders. As a result, the bids were non-uniform in format and required subjective analysis by the IBT for comparison. After IBT analysis, the three bids (in dollars per month) as evaluated were (i) Windsor, $305,071 ("plus labels"); (ii) Affiliated Graphics, $305,573 ("plus labels"); (iii) Delancy Printing, $336,400 ("plus color separations"). Further, these same bidders were asked to submit alternative proposals for their bids, but these alternatives were not considered.

The investigation revealed that while the IBT followed a competitive bidding process, secret preferential treatment was given to Windsor Graphics in its bid. Since Windsor Graphics lacked established

credit, the IBT guaranteed a Boston paper supplier that it would make Windsor's payment if the paper invoice went unpaid for 30 days. The IBT made a similar guarantee to a Boston area printing concern for the printing work. These guarantees were obtained from the IBT during the bidding process, and were not extended to the other two bidders.

The IBT further agreed to advance Windsor Graphics a monthly sum of money equivalent to one months cost of paper for The International Teamster for Windsor to keep on account. In the period May 5, 1989 until November 2, 1989, the IBT advanced the total sum of $1,344,422 to Windsor Graphics in this paper account. The IBT kept large sums on deposit with Windsor

Graphics at any given time, ranging from approximately $140,000 to approximately $247,000. The lost interest to the IBT of this interest-free loan was over $18,000 for the period of May, 1989 until August, 1991. The intangible cost of the guarantees, or the actual cost of the imputed interest were not included in the subjective consideration of the three bids. (Report at 7-14).

Based on this evidence, the Independent Administrator found the bidding process "seriously flawed" since no bid specifications were prepared, only three firms were invited to bid, the existing printer of The International Teamster was not considered, sealed bids were not required, and the evaluation of the bids

was imprecisely performed. (Report at 19-24). The IBT gave Windsor Graphics a significant competitive advantage by agreeing to guarantee payment to Windsor Graphics' paper supplier and printer, and to advance money to Windsor Graphics to pay its paper supplier. The IBT did not take into account the value of these guarantees, and the lost interest cost of keeping hundreds of thousands of dollars on account with Windsor Graphics.

After considering all of these facts and circumstances, the Independent Administrator found that McCarthy and Zeller engineered the award of The International Teamster printing contract to Windsor Graphics "by secretly conferring advantages and benefits upon Windsor that

enabled it to present what, on its face, was the lowest of three bids, but was in actuality anything but that." (Report at 34).

As a result of this investigation, the Independent Administrator acted appropriately by exercising his authority pursuant to ¶F.12.(B)(i) of the Consent Decree to veto IBT expenditures to Windsor Graphics. He may do so "whenever the Administrator reasonably believes" that such expenditures "constitute[] or further[] an act of racketeering activity" as defined in 18 U.S.C. §1961(1). In this instance, the Independent Administrator vetoed the IBT's further expenditure of additional funds to pay Windsor to print The International Teamster, since he found

that the improprieties in the bidding process amounted to the furtherance of the act of racketeering of aiding and abetting the extortion of the IBT membership's right to union democracy and self governance under the LMRDA. In addition, the Independent Administrator found that Zeller's "deliberate effort to conceal the truth" in his deposition testimony about this matter furthered this extortion.

II. Standard of Review

Paragraph K.16 of the Consent Decree provides that this Court shall review the actions of the Independent Administrator using "the same standard applicable to review of final federal agency action under the Administrative Procedures Act."

Consent Decree at 25. The decisions of the Independent Administrator are "entitled to great deference." United States v. International Brotherhood of Teamsters, 905 F.2d 610, 616 (2d Cir. 1990), aff'g March 13, 1990 Opinion & Order, 743 F. Supp. 155 (S.D.N.Y. 1990).

In order to exercise his veto pursuant to ¶F.12.(B) of the Consent Decree, the Independent Administrator must "reasonably believe" that the action would further an act of racketeering or contribute to the association of the IBT with organized crime. April 18, 1991 Opinion, supra, 761 F. Supp. at (S.D.N.Y. 1991). The decision by the Independent Administrator to exercise his veto is given the same deference that this Court and the Court of

Appeals must give determinations of the Independent Administrator.

III. Discussion

The IBT appeals the Independent Administrator's finding that McCarthy and Zeller's actions aided and abetted the extortion of the membership's LMRDA rights. Further, Zeller moves this Court to intervene.

A. Intervention

Zeller moves this Court to intervene in this matter pursuant to Fed. R. Civ. Pro. 24. Essentially, Zeller moves to intervene in order to rebut factual findings made regarding Zeller in the Report of the Independent Administrator which damage his

reputation. Zeller's concern neither implicates any federal statute, see Fed. R. Civ. Pro. 24(a)(1), nor has he demonstrated that he has "an interest relating to the property or transaction which is the subject of [this] action." Fed. R. Civ. Pro. 24(a)(2). The Independent Administrator's exercise of his veto power under the Consent Decree is a matter solely within the purview of the IBT. See April 18, 1991 Opinion & Order, 761 F. Supp. 315 (S.D.N.Y. 1991).

Accordingly, this motion to intervene is denied.

B. The IBT's Challenges

The IBT objects to the finding that McCarthy and Zeller breached their

fiduciary duties, thereby aiding and abetting the extortion of the members LMRDA rights. The IBT asserts (i) that as General President, McCarthy is under no IBT constitutional obligation to award the printing contract by competitive bidding, and (ii) McCarthy's award of the contract to Windsor Graphics saved the IBT a "substantial" amount over the previous firm that printed The International Teamster. (Report at 35). Thus, the IBT contends that the Independent Administrator's conclusions are unreasonable: since McCarthy saved the IBT a "substantial" amount of money, he did not breach his fiduciary duty to the membership. Further, the IBT argues that at the least, such savings could hardly amount to aiding and

abetting the extortion of the members' LMRDA rights.

The Government addresses all of IBT's objections to the Report of the Independent Administrator and contends that they are without merit and should be rejected. This Court agrees.

The IBT rank and file's rights to democracy and self-governance under the LMRDA, 29 U.S.C. §411(a), are extortable property under the Hobbs Act, 18 U.S.C. §1951, and the extortion of those rights may constitute an act of racketeering under the RICO statute, 18 U.S.C. §1961(1). April 18, 1991 Opinion, supra, 761 F. Supp. at 317; March 6, 1989 Opinion & Order. 708 F. Supp. 1388, 1399 (S.D.N.Y. 1989); see United States v. Local 560, 780 F.2d 267,

281-82 (3d Cir. 1985). The aiding and abetting of the members rights under the LMRDA can constitute an act of racketeering. April 18, 1991 Opinion, supra 761 F. Supp. at 317; March 6, 1989 Opinion, supra, 708 F. Supp. at 1399.

A decision by the Independent Administrator to exercise his veto power because of an action of the IBT that furthers the loss of the members' LMRDA rights must be considered in light of the fact that the membership's LMRDA rights that have been taken away through decades of institutionalized corruption. The explicit purpose of the Consent Decree was to eliminate corrupt IBT practices. To that end, the Consent Decree contains express admissions of allegations of

wrongdoing and corruption in the IBT. Consent Decree at 2.

The facts fully support the Independent Administrator's finding that the members' LMRDA rights were extorted by awarding the printing contract to Windsor Graphics. The IBT General President was expending funds to Windsor Graphics by printing The International Teamster with his son-in-law's printing firm, a firm without its own equipment, credit, contacts or track record of competence and efficiency as a concern which was awarded the contract after a rigged scheme. Payments continued monthly after the signing and implementation of the Consent Decree that was intended to end such blatant corruption. The IBT General President had

engineered a obviously self-dealing scheme. The Independent Administrator noted that such nepotistic practices were commonplace in the IBT, stating "[r]regrettably, pervasive nepotism is to be found at every level of the IBT and its affiliates." (Report at 16). It was in this unfortunate context of pervasive corruption that the Independent Administrator found that this obvious rip-off of IBT funds only furthered the longstanding denial of the membership's LMRDA rights through extortionate acts of their leadership. (Report at 34).

The actions of McCarthy and Zeller aided and abetted this extortion of the members' LMRDA rights. The Independent Administrator found that McCarthy and

Zeller aided and abetted this extortion of the membership's rights by violating their fiduciary duty to use the IBT's money for the sole benefit of the membership. 29 U.S.C. §501(a). This fiduciary duty is heightened for a union official, especially when the union official is the General President or communications director of the nation's largest labor union. See April 18, 1991 Opinion, supra, 761 F Supp. at 320. For the IBT to argue that the General President should be free to award a lucrative contract to his son-in-law by means of a rigged bidding process because there is no specific IBT constitutional provision requiring that he act otherwise is absurd.

The IBT's argues that McCarthy's awarding of The International Teamster printing contract to his son-in-law's firm saved the IBT a significant amount over the prior printing contract and was thus not violative of his fiduciary duty of the membership. This is sheer sophistry. The IBT argument that because prior General Presidents had awarded the printing contracts in the past in even more corrupt ways does not sanitize McCarthy's misconduct.

Whether McCarthy and Zeller breached their fiduciary duties to the membership is to be weighed by whether the IBT could have saved money by awarding the printing contract to a firm with established capabilities. To ask the question is to answer it.

In consequence, the Independent Administrator found that the behavior of McCarthy and Zeller, in light of all the relevant circumstances of their conduct, aided and abetted the extortion of the members LMRDA rights. Their actions were not in the best interests of the membership or the public. The record made by the Independent Administrator is sufficient to "reasonably believe" that the awarding of the printing contract to Windsor Graphics furthered an act of racketeering. The IBT has not demonstrated that conclusion was arbitrary or capricious. Accordingly, the finding of the Independent Administrator is affirmed.

IV. Conclusion

For the reasons discussed, the conclusion of the Independent Administrator that he reasonably believed that the awarding of the printing contract for The International Teamster to Windsor Graphics, Inc. furthered an act of racketeering is affirmed.

So Ordered.

Dated: June 18, 1991
New York, New York

/s/ David N. Edelstein
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO, et al., Defendants.	)	ORDER 88 CIV.4486(DNE)

WHEREAS, plaintiff United States of America commenced this action on June 28, 1988, by filing a Complaint seeking equitable relief involving the International Brotherhood of Teamsters, AFL-CIO (hereinafter, "the IBT"), pursuant to the civil remedies provisions of the Racketeer Influenced and Corrupt

Organizations ("RICO") Act, 18 U.S.C. § 1964; and

WHEREAS, the Summons and Complaint have been served, answers filed, and pretrial discovery commenced by and between the parties; and

WHEREAS, plaintiff United States of America and defendants IBT and its General Executive Board, William J. McCarthy, Weldon Mathis, Joseph Trarotola, Joseph W. Morgan, Edward M. Lawson, Arnold Weinmeister, Donald Peters, Walter J. Shea, Harold Friedman, Jack D. Cox, Don L. West, Michael J. Riley, Theodore Cozza and Daniel Ligurotis (hereinafter the "union defendants") have consented to entry of this order; and

WHEREAS, the union defendants acknowledge that there have been allegations, sworn testimony and judicial

findings of past problems with La Cosa Nostra corruption of various elements of the IBT; and

WHEREAS, the union defendants agree that there should be no criminal element or La Cosa Nostra corruption of any part of the IBT; and

WHEREAS, the union defendants agree that it is imperative that the IBT, as the largest trade union in the free world, be maintained democratically, with integrity and for the sole benefit of its members and without unlawful outside influence;

IT IS HEREBY ORDERED AND DECREED That:

A. COURT JURISDICTION

1. This Court has jurisdiction over the subject matter of the action, has personal jurisdiction over the parties, and shall retain jurisdiction over this case

until further order of the Court.

2. Upon satisfactory completion and implementation of the terms and conditions of this order, this Court shall entertain a joint motion of the parties hereto for entry of judgment dismissing this action with prejudice and without costs to either party.

B. DURATION

3. The authority of the court officers established in paragraph no. 12 herein shall terminate after the certification of the 1991 election results by the Election Officer for all IBT International Officers as provided in this Order, except as follows:

(1) The Election Officer and the Administrator shall have the authority to resolve all disputes concerning the conduct

and/or results of the elections conducted in 1991 under the authority granted to them under paragraph 12(D) herein, and the Investigations officer and the Administrator shall have the authority to investigate and discipline any corruption associated with the conduct and/or results of the elections to be conducted in 1991 under the authority granted them under paragraph 12(A) and (C) herein, so long as said investigation is begun within six months of the final balloting.

(2) The Investigations Officer and the Administrator shall have the authority to resolve to completion and decide all charges filed by the Investigations Officer on or before the date on which the authority granted to them under paragraphs 12(A) and (C) herein terminates the authority pursuant to subparagraph (3) below.

(3) The role and authority provided for in paragraphs 12 and 13 of this Order regarding the Investigations Officer and the Administrator and their relationship with the Independent Review Board shall terminate not later than nine (9) months after the certification of the 1991 election results.

(4) As used herein, the date referred to as "the certification of the 1991 election results" shall be construed to mean either the date upon which the Election Officer certifies the 1991 election results for all IBT International Officers or one month after the final balloting, whichever is shorter.

C. STATUS OF THE INDIVIDUAL UNION DEFENDANTS

4. The union defendants herein remain as officers of the IBT, subject to all of the terms herein, including the disciplinary authority of the Court-appointed officers, described in paragraph 12(A) herein.

D. CHANGES IN THE IBT CONSTITUTION

5. The portion of Section 6(a) of Article XIX of the IBT Constitution that provides, "Any charge based upon alleged conduct which occurred more than one (1) year prior to the filing of such charge is barred and shall be rejected by the Secretary-Treasurer, except charges based upon the non-payment of dues, assessment and other financial obligations," shall be and hereby is amended to provide for a five

(5) year period, running from the discovery of the conduct giving rise to the charge. This limitation period shall not apply to any actions taken by the Investigations Officer or the Administrator.

6. Section 6(a) of Article XIX of the IBT Constitution shall be deemed and is hereby amended to include the following: "Nothing herein shall preclude the General President and/or General Executive Board from suspending a member or officer facing criminal or civil trial while the charges are pending."

7. Immediately after the conclusion of the IBT elections to be conducted in 1991, Section 8 of Article VI of the IBT Constitution shall be deemed and hereby is amended to provide that a special election be held whenever a vacancy occurs in the office of IBT General President, pursuant

to the procedures described later herein for election of IBT General President.

8. Article IV, Section 2 of the IBT Constitution shall be deemed and is hereby amended to include a new paragraph as follows:

> "No candidate for election shall accept or use any contributions or other things of value received from any employers, representative of an employer, foundation, trust or any similar entity. Nothing herein shall be interpreted to prohibit receipt of contributions from fellow employees and members of this International Union. Violation of this provision shall be grounds for removal from office.

9. (a) The IBT Constitution shall be deemed and hereby is amended to incorporate and conform with all of the terms set forth in this order.

(b) By no later than the conclusion of the IBT convention to be held in 1991, the IBT shall have formally amended the IBT Constitution to incorporate

and conform with all of the terms set forth in this order by presenting said terms to the delegates for a vote. If the IBT has not formally so amended the IBT Constitution by that date, the Government retains the right to seek any appropriate action, including enforcement of this order, contempt or reopening this litigation.

E. PERMANENT INJUNCTION

10. Defendants William J. McCarthy, Weldon Mathis, Joseph Trarotola, Joseph W. Morgan, Edward M. Lawson, Arnold Weinmeister, Donald Peters, Walter J. Shea, Harold Friedman, Jack D. Cox, Don L. West, Michael J. Riley, Theodore Cozza and Daniel Ligurotis, as well as any other or future IBT General Executive Board members, officers, representatives, members and

employees of the IBT, are hereby permanently enjoined from committing any acts of racketeering activity, as defined in 18 U.S.C. § 1961 et seq., and from knowingly associating with any member or associate of the Colombo Organized Crime Family of La Cosa Nostra, the Genovese Organized Crime Family of La Cosa Nostra, the Gambino Organized Family of La Cosa Nostra, the Lucchese Organized Crime Family of La Cosa Nostra, the Bonnano Organized Crime Family of La Cosa Nostra, any other Organized Crime Families of La Cosa Nostra or any other criminal group, or any person otherwise enjoined from participating in union affairs, and from obstructing or otherwise interfering with the work of the court-appointed officers or the Independent Review Board described herein.

11. As used herein, the term, "knowingly associating," shall have the same meaning as that ascribed to that term in the context of comparable federal proceedings or federal rules and regulations.

F. COURT-APPOINTED OFFICERS

12. The Court shall appoint three (3) officers -- an Independent Administrator, an Investigations Officer and an Election Officer -- to be identified and proposed by the Government and the union defendants, to oversee certain operations of the IBT as described herein. The parties shall jointly propose to the Court at least two persons for each of these three positions. Such proposal shall be presented to the Court within four weeks of the date of the entry of this Order, except that for good

cause shown such period may be extended by the Court. Except as otherwise provided herein, the duties of those three officers shall be the following:

(A) DISCIPLINARY AUTHORITY -- From the date of the Administrator's appointment until the termination of the Administrator's authority as set forth in paragraph 3(3) herein, the Administrator shall have the rights and powers as the IBT's General President and/or General Executive Board under the IBT's Constitution (including Articles VI and XIX thereof) and Title 29 of the United States Code to discharge those duties which relate to disciplining corrupt or dishonest officers, agents, employees or members of the IBT or any of its affiliated entities (such as IBT Locals, Joint Councils and Area Conferences), and appointing temporary

trustees to run the affairs of any such affiliated entities. The Investigations Officer shall have the authority to investigate the operation of the IBT or any of its affiliates and, with cause,

(i) To initiate disciplinary charges against any officer, member or employee of the IBT or any of its affiliates in the manner specified for members under the IBT Constitution and,

(ii) To institute trusteeship proceedings for the purposes and in the manner specified in the IBT Constitution.

Prior to instituting any trusteeship proceeding the Investigations Officer shall notify the General President of the Investigations Officer's plan to institute said trusteeship proceeding and the basis

therefor and give the General President ten (10) days to exercise his authority pursuant to the IBT Constitution to institute such trusteeship proceedings. If the General President timely institutes such proceedings and/or a trusteeship is imposed, the Investigations Officer and the Administrator shall have authority to review any action thus taken by the General President and/or any trusteeship imposed thereafter and to modify any aspect of either of the above at any time and in any manner consistent with applicable federal law. If the General President fails to institute trusteeship proceedings within the ten-day period prescribed herein, the Investigations Officer may immediately proceed in accordance with the authority specified above.

When the Investigations Officer files charges, the following procedures shall be observed:

(a) the Investigations Officer shall serve written specific charges upon the person charged;

(b) the person charged shall have at least thirty (30) days prior to hearing to prepare his or her defense;

(c) a fair and impartial hearing shall be conducted before the Administrator;

(d) the person charged may be represented by an IBT member at the hearing; and

(e) the hearing shall be conducted under the rules and procedures generally applicable to labor arbitration hearings.

The Administrator shall preside at hearings in such cases and decide such cases using a "just cause" standard. The

Investigations Officer shall present evidence at such hearings. As to decisions of the IBT General Executive Board on disciplinary charges and trusteeship proceedings during the Administrator's tenure, the Administrator shall review all such decisions, with the right to affirm, modify or reverse such decisions and, with respect to trusteeship proceedings, to exercise the authority granted above in this paragraph. Any decision of the Administrator shall be final and binding, subject to the Court's review as provided herein. For a period of up to fourteen (14) days after the Administrator's decision, any person charged or entity placed in trusteeship adversely affected by the decision shall have the right to seek review by this Court of the Administrator's decision. The Administrator shall also

have the right to establish and disseminate new guidelines for investigation and discipline of corruption within the IBT. All of the above actions of the Administrator and Investigations Officer shall be in compliance with applicable Federal laws and regulations.

(B) REVIEW AUTHORITY -- From the date of the Administrator's appointment until the certification of the IBT elections to be conducted in 1991, the Administrator shall have the authority to veto whenever the Administrator reasonably believes that any of the actions or proposed actions listed below constitutes or furthers an act of racketeering activity within the definition of Title 18 U.S.C. § 1961, or furthers or contributes to the association directly, or indirectly, of the

IBT or any of its members with the LCN or elements thereof:

(i) any expenditures or proposed expenditure of International Union funds or transfer of International Union property approved by any officers, agents, representatives or employees of the IBT,

(ii) any contract or proposed contract on behalf of the International Union, other than collective bargaining agreements, and

(iii) any appointment or proposed appointments to International Union officer of any officer, agent, representative or employee of the IBT.

In any case where the Administrator exercises veto authority, the action or proposed action shall not go forward. The Administrator, upon request of the IBT's General President or General

Executive Board, shall, within three (3) days, advise the IBT's General President and/or General Executive Board whichever is applicable, of the reasons for any such veto. For a period of up to fourteen (14) days after the Administrator's decision, the IBT's President and/or General Executive Board shall have the right to seek review by this Court of the Administrator's decision. The Administrator may prescribe any reasonable mechanism or procedure to provide for the Administrator's review of actions or proposed actions by the IBT, and every officer, agent, representative or employee of the IBT shall comply with such mechanism or procedure.

(C) ACCESS TO INFORMATION -- (i) The Investigations Officer shall have the authority to take such reasonable steps

that are lawful and necessary in order to be fully informed about the activities of the IBT in accordance with the procedures as herein established. The Investigations Officer shall have the right:

(a) To examine books and records of the IBT and its affiliates, provided the entity to be examined receives three (3) business days advance notice in writing, and said entity has the right to have its representatives present during said examination.

(b) To attend meetings or portions of meetings of the General Executive Board relating in any way to any of the officer's rights or duties as set forth in this Order, provided that prior to any such meeting, the officer shall receive an agenda for the meeting and then give

notice to the General President of the officer's anticipated attendance.

(c) To take and require sworn statements or sworn in-person examinations of any officer, member, or employee of the IBT provided the Investigations Officer has reasonable cause to take such a statement and provided further that the person to be examined receives at least ten (10) days advance notice in writing and also has the right to be represented by an IBT member or legal counsel of his or her own choosing, during the course of said examination.

(d) To take, upon notice and application for cause made to this Court, which shall include affidavits in support thereto, and the opportunity for rebuttal affidavits, the sworn statements or sworn in person examination of persons who are agents of the IBT (and not covered in subparagraph (c) above).

(e) To retain an independent auditor to perform audits upon the books and records of the IBT or any of its affiliated entities (not including benefit funds subject to ERISA), provided said entity receives three (3) business days advance notice in writing and said entity has the right to have its representatives present during the conduct of said audit.

(ii) The Independent Administrator and the Election Officer shall have the same rights as the Investigations Officer as provided in sections (a), (b), (c) and (d) of A, herein.

(iii) The Independent Administrator, Investigations Officer and Election Officer shall each be provided with suitable office space at the IBT headquarters in Washington, D.C.

D. IBT ELECTION -- The IBT Constitution shall be deemed amended, and is hereby amended, to provide for the following new election procedures:

(i) The procedures described herein shall apply to elections of the IBT's General President, General Secretary-Treasurer, International Union Vice Presidents, and International Union Trustees;

(ii) Delegates to the IBT International convention at which any International Union officers are nominated or elected shall be chosen by direct rank-and-file secret balloting shortly before the convention (but not more than six months before the convention, except for those delegates elected at local union elections scheduled to be held in the fall

of 1990), and with all convention Candidate election voting by secret ballot each delegate individually;

(iii) Delegates shall nominate candidates for eleven (11) Regional Vice Presidents, as follows: Three (3) from the Eastern Conference, three (3) from the Central Conference, two (2) from the Southern Conference, two (2) from the Western Conference, and one (1) from the Canadian Conference. In addition, there shall be nominated candidates for five (5) Vice Presidents to be elected at large. All duly nominated Vice Presidents shall stand for election conducted at local unions on the same ballot and time as the election of General President and General Secretary-Treasurer, as provided herein;

(iv) At such an International convention, after the nomination of

International Union Vice Presidents and election of Trustees, all delegates shall then vote for nominees for the offices of IBT General President and Secretary-Treasurer;

(v) To qualify for the ballot for the direct rank-and-file voting for IBT General President, Secretary-Treasurer, and Vice President, candidates must receive at least five (5) percent of the delegate votes at the International convention, for the at large position, or by conference for regional positions, as the case may be;

(vi) No person on the ballot for the position of IBT General President may appear on the ballot in the same election year for the position of Secretary-Treasurer; and further no member shall be a candidate for more than one (1) Vice President position;

(vii) No less than four (4) months and no more than six (6) months after the International convention at which candidates were nominated, the IBT General President, General Secretary-Treasurer and Vice Presidents shall be elected by direct rank-and-file voting by secret ballot in unionwide, one-member, one-vote elections for each at large position, and conference wide, one-member one-vote elections for each regional position;

(viii) All direct rank-and-file voting by secret ballot described above shall be by in-person ballot box voting at local unions or absentee ballot procedures where necessary, in accordance with Department of Labor regulations; and

(ix) The current procedures under the IBT Constitution for filling a vacancy between elections in the office of General

Secretary-Treasurer, International Trustee, and International Vice President shall remain in effect.

The Election Officer shall supervise the IBT election described above to be conducted in 1991 and any special IBT elections that occur prior to the IBT elections to be conducted in 1991. In advance of each election, the Election Officer shall have the right to distribute materials about the election to the IBT membership. The Election Officer shall supervise the balloting process and certify the election results for each of these elections as promptly as possible after the balloting. Any disputes about the conduct and/or results of elections shall be resolved after hearing by the Administrator.

The union defendants consent to the Election Officer, at Government

expense, to supervise the 1996 IBT elections. The union defendants further consent to the U.S. Department of Labor supervising any IBT elections or special elections to be conducted after 1991 for the office of the IBT General President, IBT General Secretary-Treasurer, IBT Vice President, and IBT Trustee.

At the IBT 1991 International Convention, the delegates shall be presented with these aforesaid amendments for vote; provided further that nothing herein shall be deemed or interpreted or applied to abridge the Landrum-Griffin free speech right of any IBT officer, delegate or member, including the parties hereto.

(E) REPORTS TO MEMBERSHIP -- The Administrator shall have the authority to distribute materials at reasonable times to the membership of the IBT about the

Administrator's activities. The reasonable cost of distribution of these materials shall be borne by the IBT. Moreover, the Administrator shall have the authority to publish a report in each issue of the International Teamster concerning the activities of the Administrator, Investigations Officer and Election Officer.

(F) REPORTS TO THE COURT -- The Administrator shall report to the Court whenever the Administrator sees fit but, in any event, shall file with the Court a written report every three (3) months about the activities of the Administrator, Investigations Officer and Election Officer. A copy of all reports to the Court by the Administrator shall be served on plaintiff United States of America, the IBT's General President and duly designated IBT counsel.

(G) HIRING AUTHORITY -- The Administrator, the Investigations Officer and the Election Officer shall have the authority to employ accountants, consultants, experts, investigators or any other personnel necessary to assist in the proper discharge of their duties. Moreover, they shall have the authority to designate persons of their choosing to act on their behalf in performing any of their duties, as outlined in subparagraphs above. Whenever any of them wish to designate a person to act on their behalf, they shall give prior written notice of the designation to plaintiff United States of America, and the IBT's General President; and those parties shall then have the right, within fourteen (14) days of receipt of notice, to seek review by this Court of

the designation, which shall otherwise take effect fourteen (14) days after receipt of notice.

(H) COMPENSATION AND EXPENSE -- The compensation and expense of the Administrator, the Investigations Officer and the Election Officer (and any designee or persons hired by them) shall be paid by the IBT. Moreover, all costs associated with the activities of these three officials (and any designee or persons hired by them) shall be paid by the IBT. The Administrator, Investigations Officer and Election Officer shall file with the Court (and serve on plaintiff United States of America and the IBT's General President and designated IBT counsel) an application, including an itemized bill, with supporting material, for their services and expenses once every three months. The IBT's General

President shall then have fourteen (14) business days following receipt of the above in which to contest the bill before this Court. If the IBT's President fails to contest such a bill within that 14-day period, the IBT shall be obligated to pay the bill. In all disputes concerning the reasonableness of the level or amount of compensation or expense to be paid, the Court and parties shall be guided by the level of payment as authorized and approved by the IBT for the payment of similar services and expenses.

(I) APPLICATION TO THE COURT -- The Administrator may make any application to the Court that the Administrator deems warranted. Upon making any application to the Court, the Administrator shall give prior notice to plaintiff United States of America, the

IBT's General President and designated IBT counsel and shall serve any submissions filed with the Court on plaintiff United States of America, the IBT's General President and designated IBT counsel. Nothing herein shall be construed authorizing the parties or the Court-appointed officers to modify, change or amend the terms of this Order.

G. INDEPENDENT REVIEW BOARD

Following the certification of the 1991 election results, there shall be established an Independent Review Board, (hereinafter, referred to as the "Review Board"). Said Board shall consist of three members, one chosen by the Attorney General of the United States, one chosen by the IBT and a third person chosen by the Attorney General's designee and the IBT's designee.

In the event of a vacancy, the replacement shall be selected in the same manner as the person who is being replaced was selected.

(a) The Independent Review Board shall be authorized to hire a sufficient staff of investigators and attorneys to investigate adequately (1) any allegations of corruption, including bribery, embezzlement, extortion, loan sharking, violation of 29 U.S.C. §530 of the Landrum Griffin Act, Taft-Hartley Criminal violations or Hobbs Act violations, or (2) any allegations of domination or control or influence of any IBT affiliate, member or representative by La Cosa Nostra or any other organized crime entity or group, or (3) any failure to cooperate fully with the Independent Review Board in any investigation of the foregoing.

(b) The Independent Review Board

shall exercise such investigative authority as the General President and General Secretary-Treasurer are presently authorized and empowered to exercise pursuant to the IBT Constitution, as well as any and all applicable provisions of law.

(c) All officers, members, employees and representatives of the IBT and its affiliated bodies shall cooperate fully with the Independent Review Board in the course of any investigation or proceeding undertaken by it. Unreasonable failure to cooperate with the Independent Review Board shall be deemed to be conduct which brings reproach upon the IBT and which is thereby within the Independent Review Board's investigatory and decisional authority.

(d) Upon completion of an investigation, the Independent Review Board

shall issue a written report detailing its findings, charges, and recommendations concerning the discipline of union officers, members, employees, and representatives and concerning the placing in trusteeship of any IBT subordinate body. Such written reports shall be available during business hours for public inspection at the IBT office in Washington, D.C.

(e) Any findings, charges, or recommendations of the Independent Review Board regarding discipline or trusteeship matters shall be submitted in writing to any appropriate IBT entity (including designating a matter as an original jurisdiction case for General Executive Board review), with a copy sent to the General President and General Executive Board. The IBT entity to which a matter is

referred shall thereupon promptly take whatever action is appropriate under the circumstances, as provided by the IBT Constitution and applicable law. Within 90 days of the referral, that IBT entity must make written findings setting forth the specific action taken and the reasons for that action.

(f) The Independent Review Board shall monitor all matters which it has referred for action if, in its sole judgment, a matter has not been pursued and decided by the IBT entity to which the matter has been referred in a lawful, responsible, or timely manner, or that the resolution proposed by the relevant IBT entity is inadequate under the circumstances, the Independent Review Board shall notify the IBT affiliate involved of its view, and the reasons therefor. A copy

of said notice shall be sent by the Independent Review Board shall notify the IBT affiliate involved of its view, and the reasons therefor. A copy of said notice shall be sent by the Independent Review Board, to the General President and the General Executive Board.

(g) Within 10 days of the notice described in paragraph (f) above, the IBT entity involved shall set forth in writing any and all additional actions it has taken and/or will take to correct the defects set forth in said notice and a deadline by which said action may be completed. Immediately thereafter, the Independent Review Board shall issue a written determination concerning the adequacy of the additional action taken and/or proposed by the IBT entity involved. If the Independent Review Board concludes that the

IBT entity involved has failed to take or propose satisfactory action to remedy the defects specified by the Independent Review Board's notice, the Independent Review Board shall promptly convene a hearing, after notice to all affected parties. All parties shall be permitted to present any facts, evidence, or testimony which is relevant to the issue before the Independent Review Board. Any such hearing shall be conducted under the rules and procedures generally applicable to labor arbitration hearings.

(h) After a fair hearing has been conducted, the Independent Review Board shall issue a written decision which shall be sent to the General President, each member of the General Executive Board, and all affected parties.

(i) The decision of the Independent Review Board shall be final and binding, and the General Executive Board shall take all action which is necessary to implement said decision, consistent with the IBT Constitution and applicable Federal laws.

(j) The Independent Review Board shall have the right to examine and review the General Executive Board's implementation of the Independent Review's decisions; in the event the Independent Review Board is dissatisfied with the General Executive Board's implementation of any of its decision, the Independent Review Board shall have the authority to take whatever steps are appropriate to insure proper implementation of any such decision.

(k) The Independent Review Board shall be apprised of and have the authority

to review any disciplinary or trusteeship decision of the General Executive Board, and shall have the right to affirm, modify, or reverse any such decision. The Independent Review Board's affirmance, modifications, or reversal of any such General Executive Board decision shall be in writing and final and binding.

(l) The IBT shall pay all costs and expense of the Independent Review Board and its staff (including all salaries of Review Board members and staff). Invoices for all such costs and expense shall be directed to the General President for payment.

(m) The Investigations Officer and the Administrator shall continue to exercise the investigatory and disciplinary authority set forth in paragraph 12 above for the limited period set forth in

paragraph 3(3) above, provided, however, that the Investigations Officer and the Administrator may, instead, refer any such investigation or disciplinary matter to the Independent Review Board.

(n) The IBT Constitution shall be deemed and hereby is amended to incorporate all of the terms relating to the Independent Review Board set forth above in this paragraph. This amendment shall be presented to the delegates to the 1991 Convention for vote.

H. INDEMNIFICATION

13. The IBT shall purchase a policy of insurance in an appropriate amount to protect the Administrator, the Investigations Officer, the Election Officer and persons acting on their behalf from personal liability for any of their

actions on behalf of the IBT, the Administrator, the Investigations Officer or the Election Officer. If such insurance is not available, or if the IBT so elects, the IBT shall indemnify the Administrator, Investigations Officer, Election Officer and persons acting on their behalf from any liability (or costs incurred to defend against the imposition of liability) for conduct taken pursuant to this order. That indemnification shall not apply to conduct not taken pursuant to this order. In addition, the Administrator, the Investigations Officer, the Election Officer and any persons designated or hired by them to act on their behalf shall enjoy whatever exemptions from personal liability may exist under the law for court officers.

I. IBT LEGAL COUNSEL

14. During the term of office of the court-appointed officers, the IBT General President shall have the right to employ or retain legal counsel to provide consultation and representation to the IBT with respect to this litigation, to negotiate with the appropriate official and to challenge the decisions of the court-appointed officers, and may use union funds to pay for such legal consultation and representation. The Administrator's removal powers and authority over union expenditures shall not apply to such legal consultation and representation.

J. NON-WAIVER

15. To the extent that such evidence would be otherwise admissible under the Federal Rules of Evidence, nothing herein

shall be construed as a waiver by the United States of America or the United States Department of Labor of its right to offer proof of any allegation contained in the Complaint, Proposed Amended Complaint, declarations or memoranda filed in this action, in any subsequent proceeding which may lawfully be brought.

K. APPLICATION TO COURT

16. This Court shall retain jurisdiction to supervise the activities of the Administrator and to entertain any future applications by the Administrator or the parties. This Court shall have exclusive jurisdiction to decide any and all issues relating to the Administrator's actions or authority pursuant to this order. In reviewing actions of the Administrator, the Court shall apply the

same standard of review applicable to review of final federal agency action under the Administrative Procedure Act.

L. FUTURE PRACTICES

17. The parties intend the provisions set forth herein to govern future IBT practices in those areas. To the extent the IBT wishes to make any changes, constitutional or otherwise, in those provisions, the IBT shall give prior written notice to the plaintiff, through the undersigned. If the plaintiff then objects to the proposed changes as inconsistent with the terms and objectives of this order, the change shall not occur; provided, however, that the IBT shall then have the right to seek a determination from this Court, or, after the entry of judgment dismissing this action, from this Court or

any other federal court of competent jurisdiction as to whether the proposed change is consistent with the terms and objectives set forth herein.

M. SCOPE OF ORDER

18. Except as provided by the terms of this order, nothing else herein shall be construed or interpreted as affecting or modifying: (a) the IBT Constitution; (b) the Bylaws and Constitution of any IBT affiliates; (c) the conduct and operation of the affairs of the IBT or any IBT-affiliated entity or any employee benefit fund as defined in ERISA or trust fund as defined by Section 302(c) of the Labor Management Relations Act, as amended; (d) the receipt of any compensation or benefits lawfully due or vested to any officer, member or employee of the IBT or

any of its affiliates and affiliated benefit fund; or (e) the term of office of any elected or appointed IBT officer or any of the officers of any IBT-affiliated entities.

N. NON-ADMISSION CLAUSE

19. Nothing herein shall be construed as an admission by any of the individual union defendants of any wrongdoing or breach of any legal or fiduciary duty or obligation in the discharge of their duties as IBT officers and members of the IBT General Executive Board.

O. FUTURE ACTIONS

20. Nothing herein shall preclude the United States of America or the United States Department of Labor from taking any appropriate action in regard to any of the

union defendants in reliance on federal laws, including an action or motion to require disgorgement of pension, severance or any other retirement benefits of any individual union officer defendant on whom discipline is imposed pursuant to paragraph 12 above.

P. LIMITS OF ORDER

21. Nothing herein shall create or confer or is intended to create or confer, any enforceable right, claim or benefit on the part of any person or entity other than to the parties hereto and the court-appointed officers established herein. As to the undersigned defendants hereto, this order supercedes the order of the Court entered on June 28, 1988, as thereafter extended.

Q. EXECUTION

22. Each of the undersigned individual defendants has read this order and has had an opportunity to consult with counsel before signing the order.

March 14, 1989.

DAVID N. EDELSTEIN
United States District Judge

CONSENTED TO:

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By: _____
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_____
Defendant WILLIAM J. McCARTHY

_____
Defendant WELDON MATHIS

_____
Defendant JOSEPH TREROTOLA

_____
Defendant JOSEPH W. MORGAN

Defendant EDWARD M. LAWSON

Defendant ARNOLD WEINMEISTER

Defendant DONALD PETERS

Defendant WALTER J. SHEA

Defendant HAROLD FRIEDMAN

Defendant JACK D. COX

Defendant DON L. WEST

Defendant MICHAEL J. RILEY

Defendant THEODORE COZZA

Defendant DANIEL LIGUROTIS